IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 21ST FEBRUARY 2007 / 2ND PHALGUNA 1928

CRL.A.No. 700 of 1999(A)

CC.232/1996 of JUDL.MAGISTRATE OF FIRST CLASS-I, KARUNAGAPPILLY

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APPELLANT/COMPLAINANT:

THULASEEDHARAN PILLAI,
VIJAYA MANDIRAM, PALAKKAL MURI,
THEVALAKKARA.

BY ADV. SRI.JOSE J.MATHEIKAL

RESPONDENTS/ACCUSED & STATE:

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1. AJAYAN PILLAI, AJAYA BHAVAN,
   PADA SOUTH, KARUNAGAPPILLY.

2. THE STATE OF KERALA REPRESENTED BY
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.C.SANTHOSH KUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 21/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Crl.Appeal No.700 OF 1999

Dated 21st February, 2007

JUDGMENT

This appeal is filed against order of acquittal under Section 255(1) of the Code of Criminal Procedure. Case of the appellant is that the cheque issued by the accused for Rs.20,000/= was dishonoured for insufficiency of funds. The cheque was drawn on State Bank of Travancore and it was presented by him before his bank (Kollam District Co-operative Bank Ltd., Karunagappilly). State Bank intimated his bank by intimation dated 21.8.1995 that cheque cannot be passed due to insufficiency of funds. That was intimated to him by the District Co-operative Bank by intimation dated 21.8.1995 and cover was also produced as Ext.P6. It shows that the above intimation was sent on 29.8.1995 and received by the appellant on 30.8.1995. The notice was sent on 11.9.1995, within 15 days. However, the trial court acquitted him only on the ground that notice was given after 15 days taking the date of knowledge of dishonour as 21.8.1995. In chief examination the appellant stated as follows:

What he stated was that on 21st his bank received the intimation from State Bank and State Bank in turn intimated him and that intimation was received only on 30.8.1995. During cross examination what he stated was that the letter dated 21.8.1995 was given from his bank and not that he received the intimation from his bank on 21st. The postal cover enclosing Ext.P3 would prove the same. In the above circumstances, prima facie, I am of the view that order of acquittal is not correct.

2. In the above circumstances, I set aside the impugned judgment. The matter has to be reconsidered by the trial court with respect to the evidence. Parties shall appear before the trial court on 13.3.2007. Even though notice was served on the accused, there was no appearance for him. In the above circumstances, the court

below shall intimate the date of posting to the counsel appearing for the accused before the trial court. Parties are also free to settle the matter before the trial court.

The allowed by way of remand.

J.B.KOSHY
Judge

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